Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition (S/B) No.214 of 2006

Dr. B.M.Sharma aged about 59 years
S/o late Badri Narayan Sharma,
Presently posted as Chief Medical Officer,
Chamoli. ..... Petitioner

Versus

1. State of Uttaranchal through Principal Secretary, Medical & Health, Civil Secretariat Dehradun.

2. Director General, Medical, Health & Family Welfare, Uttaranchal, Dehradun.

3. State of U.P. through Principal Secretary, Medical & Health, Civil Secretariat, Lucknow.

4. Director General, Medical, Health & Family Welfare, Uttaranchal, Dehradun.

5. Union of India through Secretary, Department of Personnel, Public Grievances And Pension, New Delhi.

6. State Advisory Committee, Gate No.31 Jawahar Lal Nehru Stadium, New Delhi Through its Chairman.

7. Alok Kumar Jain S/o not known to the petitioner, presently posted as Principal Secretary (Medical) State of Uttaranchal.

..... Respondents

Sri V.K.Bisht, learned Sr.Advocate assisted by Sri Paresh Tripathi, learned counsel for the petitioner
Sri K.P.Upadhyay, learned Standing Counsel for the respondents.

Date: July 11,2006

Hon'ble P.C. Verma,J.
Hon'ble B.S.Verma,J.

The petitioner was member of Provincial Medical & Health Services in existing State of Uttar

Pradesh. Prior to the appointed day the petitioner was posted in District Haridwar in the Sate of Uttaranchal and by virtue of Section 75 of Uttar Pradesh Reorganization Act, 2000 ***(hereinafter referred to as the Act)*** the petitioner continued to work in the various districts of State of Uttaranchal.

2. The final allocation of the Provincial Medical Health Service cadre has been made under sub section (2) of Section 73 of the Act on 05.10.2005. By the order No. 39 of 2005 it has been provided that the names of those officers who have been allocated to State of Uttaranchal is appended with the said Order. It has been further provided that all the other left out members of the same cadre are finally allocated to State of Uttar Pradesh.

3. We have perused the list appended with the Order No.39 of 2005 dated 5th Oct.,2005 issued by the Government of India under sub section (2) of Section 73 of the Act, the name of the petitioner does not find place in the list of officers finally allocated to the State of Uttaranchal. Meaning thereby by virtue of condition of said Order No.39 of 2005, the petitioner has finally been allocated to State of Uttar Pradesh.

4. By the impugned order the petitioner has been relieved to State of Uttar Pradesh. The impugned order refers the order dated 5th October, 2005, in compliance of which the petitioner had been relieved. The petitioner has challenged the order of relieving on the various grounds, inter alia, i.e. mala fide, the consent of the Governor has not been obtained, it is also in contravention of provision of sub section (3) of Section 73 of the Act and further more the Director General, Medical & Health Services by his letter dated 05.03.2005 have recommended the name

of ten persons including the name of petitioner for reconsideration who were discharging their duties in the State of Uttaranchal on or before the appointed day and who have not been allocated to the State of Uttaranchal. Only the petitioner has been singled out to be relieved for the State of Uttar Pradesh. Other members of the Provincial Medical & Heal Services who have been finally allocated by the Government Order dated 5th October, 2005 have not been relieved except the petitioner.

5. Under Section 73 of the Act, the final allocation is to be made by the Central Government. The Central Government has made allocation allocating the members of the Provincial Medical & Health Services to the State of Uttaranchal and the petitioner has been allocated to State of Uttar Pradesh by virtue of proviso to the Government Order. Proviso of Section 75 of the Act empowers to relieve any officer who is not allocated to State of Uttaranchal as sub section (1) of Section 73 of the Act provides that every employee of the existing State of Uttar Pradesh shall be deemed to serve provisionally in the State of Uttar Pradesh. Thus, proviso to sub section (1) of Section 73 of the Act gives a vide discretion to the State Government to relieve any officer prior to its allocation. Here in the present case, since the allocation has been made, therefore the petitioner has rightly been relieved for State of Uttar Pradesh. The malafide alleged does not have any nexus with the relieving of the petitioner. It is the discretion of the State Government to exercise the powers in the public interest to relieve any officer who is finally allocated to State of Uttar Pradesh. Therefore, the plea of discrimination is also not available to the petitioner. All the officers are finally to be relieved

day by day. In so far as consent of the Governor is concerned, the plea is misconceived. The order has been passed in accordance with the provision of rules of business framed under Article 166 of the constitution of India. As the Secretary is authorised by the Governor to exercise such power under Rules, therefore the petition has no force and is devoid of merit.

6. The petition is dismissed. No order as to costs.

(B.S.Verma,J.)
11.07.2006

(P.C.Verma,J.)
11.07.2006

P.Singh